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TESLAW E-Newsletter
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Dear Members,

Welcome to the TESLAW E-Newsletter. We just concluded another exciting and well-attended Entertainment Law Institute, curated by Mike Tolleson. TESLAW's next event will be our annual SXSW mixer. The date, time, and location have yet to be confirmed, but we intend to focus this year on SXSW's interactive, film, and media aspects, as well as music!

I look forward to seeing you all at the SXSW mixer. And, please see below for additional breaking news. Enjoy the newsletter!

Very truly yours,
Craig Crafton, Chair
[Entertainment and Sports Law Section](#)

TESLAW BREAKING NEWS!

- The E-Newsletter will be provided on a *quarterly* basis starting in January 2015. This will provide our newsletter staff additional time to increase the quality of each publication.
- An E-Newsletter archive will be available on our website within the next few weeks. Future newsletters will be uploaded to the site one (1) month after release. Forgot to download that practice document and lost the E-Newsletter blast in your email? No problem! You will be able to reference the archive [here](#).
- The Rock Star Attorney T-shirts and koozies will be available for sale at the SXSW mixer in March 2015. Additionally, a new design will be forthcoming (film/TV lawyers get ready!!) and available for sale at the [State Bar of Texas Annual Meeting](#) in June 2015.

Spotlight on Tall Castle & TALA

TESLAW is proud to support [Tall Castle](#) and [Texas Accountants and Lawyers for the Arts](#) (TALA), both recipients of a TESLAW grant. We strongly believe in these two organizations and their missions. Read below for more information on both organizations.

Tall Castle, Inc. is a nonprofit production company dedicated to teaching the art and craft of filmmaking through internships and apprenticeships. It develops and produces quality content that educates, inspires human potential, and cultivates understanding and tolerance among different groups. Tax-deductible donations and volunteers are greatly appreciated; for more information, please visit the Tall Castle [website](#).

TALA was formed in 1979 to help meet the legal and accounting needs of artists and arts nonprofits across Texas. TALA's pro bono legal and accounting services are offered to artists from all creative disciplines, including visual artists, musicians, actors, dancers, filmmakers and writers. TALA's services include legal and accounting assistance, nonprofit incorporation, dispute resolution services, and educational programs and publications for artists and arts nonprofits to help apply legal and accounting concepts for their benefit. For more information please visit the TALA [website](#).

Five Things You Must Know About Reality Television Deals

by [Evan M. Fogelman](#)

Originally published in September 2014 DBA Headnotes

From my perspective as television production counsel doing the legal work related to television programming actually under contract for broadcast by traditional or cable networks, unscripted shows—often referred to as “reality TV”—are here to stay. State production incentives, the relative low cost of concept and talent acquisition, and the sheer volume demands of so many television stations encourage continued unscripted programming development. Thus, it comes as no surprise that a colleague will call me to ask questions about a reality TV contract—usually a talent agreement—offered to his or her client. During those calls, I address five contract and television industry business standards of which every lawyer who does not practice in the area should be aware.

1. Most unscripted television programming is developed and acquired by “outside” producers. By “outside,” I mean companies that are in no way part of the ultimate broadcast network. You have never heard of many of these companies. They are not household name brands like their broadcast pairings, but you can see their names often delineated at the end of shows during the production credits. They license and acquire all show concepts and talent on a turnkey basis and then, by the likes of a master production style agreement, turn everything over to the marquee names you recognize.
2. This producer’s contract with the network necessarily governs the producer’s contract terms with your client and you should get used to the idea you may never be able to see it. It may be proprietary, but even more relevant is that you are not negotiating with the broadcast network. Therefore, your diligence must bring you to an understanding of the generally accepted industry standards upon which that larger contract is based. One of the incentives for networks to use “outside” producers is that they do not have to deal directly with the talent.
3. Talent compensation is generally paid on a per-episode-appearance basis within a certain number of days after completion of the photography for that episode. Here it is key to understand that the broadcast contract will be on a “cycle” basis. Accordingly, if your client is to be paid a certain amount per cycle episode and that cycle is, say, 18 episodes, but the first season is 14 episodes and those remaining 4 episodes are held over for broadcast in the second season, your dreams of negotiating that big raise after the first year may be dashed. And it is also important to know that, especially for new talent, there is generally no “pay or play” mandate. If pay is on an appearance basis and your client does not appear in an episode, then he or she will not be paid for that episode. Your client is not a major star yet. There is no obligation—just a right—to utilize his or her talent.
4. Ownership of all intellectual property (IP) related to the show is acquired by the producer and, ultimately, owned by the broadcast network. Yet you would do well to remember that IP related to the show might not necessarily mean IP created before the show or unrelated IP created during the show. This is particularly important when the talent you are representing is a business or activity that provides the conceptual foundation or even the name of the program. It is up to you to carve out exceptions. For example, imagine that your client is a goose hunter who had been producing goose calls for years and becomes the main character in a TV show called “Goose Dynasty.”
5. Unscripted does not mean undirected. “Reality” television still must be orchestrated into narrative or plot formats for entertainment purposes. And that includes characterization. This is why most talent agreements contain an “unflattering light” provision that most production counsel are not flexible about removing. Reality TV is not PBS documentary programming, and accuracy of depiction is thus not always warranted. Many lawyers unfamiliar with TV contracts become agitated over this provision and created client expectations out of line with industry standards.

As a conclusion, let me remind you that ratings drive the business. No matter how savvy a negotiator you are, nothing will enable your position better than a first season success. If successful enough, everything may be re-negotiable. I hope to see you around the show, so to speak!

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Send questions, comments, and submissions for the TESLAW E-Newsletter to the E-Newsletter editor in chief, Victoria Helling via [email](#).

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